IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2024

CORAM:

THE HON'BLE Mr. JUSTICE G.K. ILANTHIRAIYAN

W.P.No.3559 of 2020
AND
W.M.P.No.4172 of 2020

A.Irudayaraj ... Petitioner

vs.

1.The Principal Secretary to Government,
Finance (Co-operative Audit) Department,
Government of Tamil Nadu,
Fort St.Geoge,
Chennai – 600 009.

2.The Director,
Directorate of Co-operative Audit,
Vetenary Hospital Complex, IInd Floor,
Amma Valagam,
571, Anna Salai,
Nandanam,
Chennai – 600 035.

3.The Chairman,
Tamil Nadu Public Service Commission,
Chennai – 600 001. ... Respondents

Writ Petition is filed under Article 226 of Constitution of India to issue a writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 1st respondent in G.O.Ms.No.230 நிதி (கூட்டுறவு

தணிக்கை)த் துறை dated 30.07.2019 and consequently order passed by the Director of Co-operative Societies in Na.Ka.No.13733/2013/பொ.நி.3(1) dated 05.09.2019 and in Na.Ka.No.13733/2013/ பொ.நி.3(1) dated 05.09.2019 and quash the same thereby direct the respondents to give promotion to the petitioner based on the benefits given under G.O.Ms.No.2024 (Revenue Department) dated 15.05.1974 and give all the benefits.

For Petitioner	:	Mr.A.R.Nixon
For Respondents 1 & 2	:	Mr.P.Ganesan Government Advocate
For Respondent 3	:	Mr.R.Bharanidharan Standing Counsel

ORDER

This writ petition has been filed challenging the order dated 30.07.2019 passed by the 1st respondent and the consequential order passed by the 2nd respondent dated 05.09.2019, thereby cancelling the regularisation of the petitioner's services from 24.08.1984.

2. The brief facts of the case are as under :

2.1. The petitioner, who was born in Burma, was given shelter in India and as per G.O.Ms.No.2024, Revenue Department dated 15.05.1974, rules of repatriates were relaxed and they were given opportunity in employment in various departments. The petitioner has registered his repatriate certificate along with his educational qualification in the employment exchange.

2.2. The petitioner was appointed as Junior Co-operative Auditor on 24.08.1984 under the Burma Repatriate quota and his services were regularised on 16.10.1989. Thereafter, he retired from service on attaining the age of superannuation on 31.05.2019. Since his services were not regularised from the date of his initial appointment *i.e.,* on 24.08.1984, the petitioner submitted a representation and finally, an order dated 03.05.2013 was passed by the 1st respondent in G.O.2(D) No.40, Finance (Co-operative Audit) Department, confirming the services of the petitioner from the date of his initial appointment *i.e.,* on 24.08.1984 under the Burma Repatriate quota, however, without monetary benefits.

2.3. Accordingly, his seniority in the post of Junior Co-operative Auditor, Senior Co-operative Auditor and Co-operative Audit Officer, were fixed by the proceedings of the 2nd respondent dated 15.09.2015, 07.01.2016 and 07.01.2016, respectively.

2.4. Since the petitioner's name was not included in the promotion panel of Assistant Director, he filed W.P.No.31048 of 2018, for a direction to implement the orders passed by the 2nd respondent dated 04.02.2016, which is pending before this Court. Further, the petitioner filed another W.P.No.31128 of 2018, challenging G.O.2(D) No.40, *supra*, insofar as it deprived him of monetary benefits and the consequential order dated 20.07.2015 on the file of the 2nd respondent, which is also pending before this Court.

2.5. After the petitioner retired from service, the 1st respondent passed an order in G.O.Ms.No.230, Finance (Co-operative Audit) Department, dated 30.07.2019, thereby cancelling the benefits granted to the petitioner as a Burma Repatriate from 24.08.1984 and the benefits granted to the petitioner as a Junior Co-operative Auditor, Senior Co-operative Auditor. Challenging this order and the consequential orders dated 05.09.2019 passed by the 2nd respondent, the petitioner is before this Court.

3. The respondents 1 and 2 have filed a counter affidavit stating that around 1,300 persons were temporarily recruited as Junior Inspectors of Co-operative Societies under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Services Rules, against the vacancies then existed in the erstwhile

Co-operative Department. It was purely temporary in nature, in which, the petitioner was one among such temporary appointees to the post of Junior Inspector of Co-operative Societies.

4. It is further stated in the counter affidavit that after creation of the Department of Co-operative Audit, the post of Junior Inspector of Co-operative Societies was re-designated as Junior Co-operative Auditor and a separate set of rules were framed in the Co-operative Audit Department *vide* G.O.Ms.No.253, Finance (Co-operative Audit) Department dated 31.03.1986. Further, an option was requested from the regular employees of the composite Co-operative Department as to whether they are willing to serve in the newly created department *i.e.*, the Co-operative Audit Department or to continue in the parent department *i.e.*, the Co-operative Department. Accordingly, the persons who opted to be transferred to the new department, were transferred to the new department. Since the petitioner was appointed under Rule 10(a)(i), *ibid.* and his service was not regularised, he was not called to exercise the said option.

5. The counter affidavit further proceeds to state that in order to regularise the service of the persons, who joined as Junior Co-operative Auditors, the Government ordered to conduct a special qualifying examination through the 3rd

respondent and accordingly, an examination was conducted on 15.10.1989, in which, 330 persons came out successful, including the petitioner. Accordingly, their services were regularised w.e.f. 16.10.1989 as per G.O.Ms.No.86, CF & CP Department dated 25.01.1993. Further, in G.O.Ms.No.115, CF & CP Department dated 17.05.1995, Rules 9 and 10 of *ad hoc* rules were relaxed, in favour of 107 temporary Junior Cooperative Auditors, including the petitioner, w.e.f. 16.10.1989, exempting them from undergoing training for the purpose of commencement of probation. Therefore, the probation of the petitioner had commenced on 16.10.1983 and he was promoted to the post Senior Co-operative Auditor on 11.08.1995 and thereafter, to the post of Co-operative Audit Officer on 02.07.2008 and subsequently, as Assistant Director of Co-operative Audit on 01.06.2018. The petitioner retired from service on 31.05.2019 on attaining the age of superannuation.

6. It is the further stand in the counter affidavit that the request made by the petitioner for regularisation of his service from the date of his appointment was initially rejected, on the ground that G.O.Ms.No.2024, *supra*, has no applicability to his case, since he was appointed under Rule 10(a)(i), *ibid.* as Junior Inspector of Co-operative Societies as a repatriate from Burma. However, considering the repeated requests made by the petitioner, his service

was regularised from the date of his initial appointment *i.e.,* on 24.08.1984. But, the 3rd respondent, by a communication dated 24.10.2016, had not accorded to revise the petitioner's seniority in the post of Assistant Director of Co-operative Audit.

7. It is further averred in the counter affidavit that the Government had re-examined the issue and concluded that G.O.Ms.No.2024, *supra*, has no application to the case of the petitioner and G.O.2(D) No.40, *supra*, granting notional regularisation to the petitioner was not in order, as the same was issued inadvertently relying upon G.O.Ms.No.2024, *supra*. In order to rectify this mistake, G.O.Ms.No.230, *supra*, was issued thereby cancelling the earlier G.O.2(D) No.40, *supra.*

8. Accordingly, the 2nd respondent, by order dated 05.09.2019, cancelled the regularisation order of the petitioner and also restored the seniority of the petitioner in the posts of Junior Co-operative Auditor, Senior Co-operative Auditor and Co-operative Auditor.

9. Heard the learned counsel for the respective parties and also perused the materials placed on record.

10. A bare perusal of the counter affidavit reveals that the petitioner's case has been carefully examined by the respondents before passing the orders impugned. The reasons assigned in the counter affidavit for having passed G.O.(Ms.) No.230, *supra*, and the consequential orders dated 05.09.2019 passed by the second respondent are convincing enough calling for no interference by this Court.

11. In view of the above, this Court finds no infirmity on the orders impugned in this writ petition and hence, this writ petition is dismissed as being devoid of merits. No costs. Connected W.M.P. is closed.

27.08.2024

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Index: Yes/No
Internet: Yes/No

To

1.The Principal Secretary to Government,
Finance (Co-operative Audit) Department,
Government of Tamil Nadu,
Fort St.Geoge,
Chennai – 600 009.

2.The Director,
Directorate of Co-operative Audit,
Vetenary Hospital Complex, IInd Floor,
Amma Valagam,
571, Anna Salai,
Nandanam,
Chennai – 600 035.

3.The Chairman,
Tamil Nadu Public Service Commission,
Chennai – 600 001.

G.K. ILANTHIRAIYAN, J.

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W.P.No.3559 of 2020

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